

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL J KEARNEY,

Plaintiff,

v.

JOHN D SNAZA et al.,

Defendant.

CASE NO. C13-5383 RJB-JRC

ORDER DENYING THREE  
MOTIONS FILED BY PLAINTIFF

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

Plaintiff has filed three motions that were noted for July 26, 2013. Plaintiff asks the Court to order the defendants to file an answer, (ECF No. 25), plaintiff asks for leave to file an amended complaint, (ECF No. 26), and plaintiff asks the Court to stay defendants' filing of an answer until his amended complaint has been served (ECF No. 29).

The Court denies plaintiff's motion asking that the Court order defendants to file an answer (ECF No. 25). When a defendant fails to answer a complaint, and plaintiff believes the time for filing the responsive pleading has elapsed, the proper course of action is for plaintiff to

1 file a motion for default. *See* Fed. R. Civ. P. 55. Therefore, plaintiff's motion is not the  
2 appropriate request and is denied.

3 The Court denies plaintiff's motion to file an amended complaint. The original complaint,  
4 including exhibits, was fifty-six pages in length (ECF No. 5). The proposed amended complaint  
5 including exhibits is one hundred and two pages long (ECF No. 26). Local Rule 15 states:

6 A party who moves for leave to amend a pleading, or who seeks to amend a  
7 pleading by stipulation and order, must attach a copy of the proposed amended  
8 pleading as an exhibit to the motion or stipulation. The party must indicate on the  
9 proposed amended pleading how it differs from the pleading that it amends by  
10 bracketing or striking through the text to be deleted and underlining or  
11 highlighting the text to be added. The proposed amended pleading must not  
incorporate by reference any part of the preceding pleading, including exhibits. If  
a motion or stipulation for leave to amend is granted, the party whose pleading  
was amended must file and serve the amended pleading on all parties within  
fourteen (14) days of the filing of the order granting leave to amend, unless the  
court orders otherwise.

12 Plaintiff has not informed the Court how his proposed amended complaint differs from  
13 the original. Further, plaintiff's proposed amended complaint violates Fed. R. Civ. P. 8(a)(2),  
14 which requires a short and plain statement of the claim showing that plaintiff is entitled to relief.  
15 The eighty-four pages of exhibits plaintiff seeks to attach to his proposed amended complaint are  
16 not necessary.

17 In light of the Court's order denying amendment, plaintiff's motion to stay defendants'  
18 answer until receipt of the amended complaint is denied (ECF No. 29).

19 Dated this 14<sup>th</sup> day of August, 2013.

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22 J. Richard Creatura  
23 United States Magistrate Judge  
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